International Longshore and Warehouse Union, Local 19 *and* National Construction Alliance II and Pacific Northwest Regional Council of Carpenters and Seattle Tunnel Partners, a joint venture and Total Terminals International, LLC Cases 19–CD–111765 and 19–CD–111802

December 2, 2014

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS MISCIMARRA, JOHNSON, AND SCHIFFER

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. On August 21, 2013, the National Construction Alliance II (NCA) and Pacific Northwest Regional Council of Carpenters (Carpenters) filed charges alleging that International Longshore and Warehouse Union, Local 19 (Local 19 or Longshoremen) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing Seattle Tunnel Partners (STP), a joint venture, to assign certain work to employees represented by Longshoremen rather than to employees represented by Carpenters and International Union of Operating Engineers, Local 302 (Operating Engineers). Regional Director Ronald K. Hooks issued a notice of 10(k) hearing on August 28, 2013.[1] A hearing was held on September 5, 10, 17, and 18, 2013, before Hearing Officer Michael Snyder.[2] Thereafter, Carpenters and Longshoremen filed posthearing briefs in support of their positions. Longshoremen also moves to quash the Section 10(k) notice of hearing.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

NCA and Carpenters stipulated that STP, a joint venture with a place of business in Seattle, Washington, is an employer within the meaning of the Act. NCA and Carpenters stipulated that Total Terminals International, LLC (TTI), a Delaware limited liability company with a place of business in Seattle, Washington, is an employer within the meaning of the Act. Longshoremen declined to join these stipulations. Based on the record as a whole, we find that STP and TTI annually provide services valued in excess of $50,000 directly to customers outside the State of Washington. Accordingly, we find that STP and TTI are engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated and we find that Longshoremen and Operating Engineers are labor organizations within the meaning of Section 2(5) the Act. NCA and Carpenters stipulated that Carpenters is a labor organization within the meaning of the Act. Longshoremen declined to join this stipulation. Consistent with the record and prior Board decisions,[3] we find that Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

On May 26, 2010, the Washington State Department of Transportation (WSDOT) issued a Request for Proposal, i.e., a solicitation of bids, for the construction of a $1.3 billion underground double-deck highway beneath downtown Seattle. WSDOT awarded the contract to STP in December 2010.

As required by WSDOT, STP entered into a project labor agreement (the PLA) with various labor organizations, including NCA,[4] Carpenters, and Operating Engineers. Longshoremen is not a party to the PLA. There is no evidence that WSDOT required bidders to enter into project labor agreements with any specific unions or labor organizations. The PLA's Mission Statement provides that "[i]t is the intent of the parties to set out uniform standard working conditions for the efficient performance of the bored tunnel and related work." The PLA defines covered work as "[a]ll construction work performed at temporary facilities, such as fabrication yards and/or assembly plants located at or adjacent to the Project site, which are integrated with and set up for the purpose of only servicing the construction project." The PLA also fully incorporates, by reference, the WSDOT Request for Proposal. Finally, the PLA includes a sub-

[1] Longshoremen's contention that the Board lacked a quorum at the time it announced the appointment of Ronald K. Hooks as Regional Director for Region 19, and that consequently the notice of 10(k) hearing must be quashed, is without merit. Although Regional Director Hooks' appointment was announced on January 6, 2012, the Board approved the appointment on December 22, 2011, at which time it had a quorum.

[2] NCA, Carpenters, and Longshoremen participated in the hearing. Operating Engineers, STP, and Total Terminals International, LLC did not.

[3] See, e.g., *Carpenters Pacific Northwest Regional Council (Brand Energy Services)*, 355 NLRB 274, 274 (2010); *Systems West LLC*, 342 NLRB 851, 854 (2004); *Carpenters (DWA Trade Show & Exposition Services)*, 339 NLRB 1027, 1031 (2003).

[4] NCA is a labor organization affiliated with Carpenters and Operating Engineers local unions throughout the Pacific Northwest. As it did here, NCA negotiates project labor and collective-bargaining agreements on behalf of these unions with signatory employers. STP is an NCA signatory.

contracting clause, pursuant to which STP agrees that if it "subcontracts out any work covered by this Agreement, such subcontractors, at all tiers, shall become signatory to this Agreement, prior to beginning work on the Project."

A significant component of this project is the excavation of a tunnel using a tunnel boring machine (TBM), custom-built for this project in Japan, and a conveyor system, which transports excavated material (muck) out of the tunnel for removal from the construction site by truck and barge. Operation of the conveyor system and removal of muck via barge are at the center of this dispute.

The disputed work encompasses four positions: two conveyor operators and two winch operators. One conveyor operator is responsible for manning the conveyor system as it transports muck away from the tunnel site. This operator monitors the flow of muck and may stop the conveyor when necessary. The conveyor system transports some muck directly to barges. It transports other muck to a stockpile (also known as a surge pile) for future removal. A second conveyor operator removes the stockpiled muck, using a front-end loader to deposit this muck back onto the conveyor system for transport to either truck or barge. The two winch operators use winches to position barges for loading of muck. STP Project Manager Chris Dixon testified that, pursuant to the PLA, STP intended to assign employees represented by Carpenters to the winch operator positions, and employees represented by Operating Engineers to the conveyor operator positions.[5]

In preparation for the project, WSDOT entered into a lease agreement with the Port of Seattle (the Port) to occupy a 5-acre parcel of Terminal 46 as a staging area for work on the project, including the disputed work here. The Port had previously leased the entirety of Terminal 46 to TTI for its operations.[6] But as part of the Port-WSDOT agreement, TTI agreed to relinquish the 5-acre parcel in exchange for WSDOT making improvements to the remainder of the terminal. Pertinently, the Port-WSDOT lease agreement states that STP will use the 5-acre parcel "to remove tunnel spoils via a conveyor system to Terminal 46 and barge them from the dock to their final destination."

Beginning in April 2011, STP met regularly with WSDOT to discuss the project. From the outset, WSDOT asked STP to meet with Longshoremen to discuss its members performing the work that STP intended to assign to the Building Trades pursuant to the PLA. Dixon testified that WSDOT encouraged STP to do what it could to accommodate Longshoremen's desire to participate in the project. Dixon explained that the Port was a major funding partner of the project and that it had a longstanding relationship with Longshoremen.

During 2011 and 2012, STP and WSDOT participated in numerous meetings where Longshoremen's performance of the disputed work was discussed. Longshoremen was present during at least some of these meetings. Throughout these discussions, STP took the position that it would accommodate WSDOT's request that it assign work to Longshoremen only if the Building Trades agreed to the assignment. STP repeatedly proposed a composite crew, assigning the conveyor work to Operating Engineers and the winch work to Longshoremen. Dixon explained that STP foresaw this as the only scenario under which the Building Trades would agree to give up any of the work already promised to it under the PLA. Longshoremen, however, rejected this compromise proposal. STP did not notify the Building Trades about these discussions.

By November 2012, STP, Longshoremen, and WSDOT had been unable to reach an agreement. At that time, STP received an unsolicited offer to perform the disputed work from SSA, a company that operates two terminals in the Port of Seattle. SSA is a member of the Pacific Maritime Association, a multiemployer association that negotiates and administers collective-bargaining agreements between its member employers and Longshoremen. As a PMA member, SSA could utilize employees represented by Longshoremen to perform the work if it could reach an agreement with STP. STP explained to SSA that any agreement was dependent upon the Building Trades' consent. On February 13, 2013, STP abandoned talks with SSA over cost concerns. Again, STP did not notify the Building Trades about these discussions.

In late 2012, STP commenced negotiations with TTI to dock, unload, and transport all components of the TBM across Terminal 46 to the site of the tunnel excavation.[7] By this time, STP had already reached an agreement with a Japanese company to ship the TBM from Japan. The TBM was scheduled to arrive at Terminal 46 in the spring of 2013. By mid-February 2013, STP and TTI had yet to reach an agreement. Like SSA, TTI is a PMA member. On February 19, 2013, after learning of the failed SSA deal, TTI approached STP about negotiating

[5] Carpenters and Operating Engineers are collectively referred to as the "Building Trades."

[6] TTI is "a full service marine terminal and stevedore operator along the U.S. West Coast." http://www.totalterminals.com/ (last visited Sept. 8, 2014).

[7] The TBM consists of multiple pieces, the heaviest weighing in excess of 850 tons.

an agreement that would include Longshoremen performing the disputed work.

On March 18, 2013, the ship carrying the TBM left Japan, scheduled to arrive at Terminal 46 in 2 weeks. On March 19, 2013, TTI presented STP with a combined proposal to unload the TBM and perform the disputed work. STP asked TTI to propose separate agreements. TTI refused. TTI General Manager Blackmore explained that doing so would be inconsistent with TTI's practice of only signing single agreements with contractors.

On April 2, 2013, the ship carrying the TBM arrived. Under the terms of the agreement between STP and the Japanese shipping company, the ship carrying the TBM was free to leave if it did not dock within 7 days of its arrival. Dixon testified that TTI would not allow the ship to dock until the parties signed a single agreement. On April 5, 2013, STP signed a single agreement with TTI. Dixon testified that STP signed the agreement "under duress, because it was the only way we were able to get the ship unloaded." Otherwise, Dixon explained, the next window for delivery of the TBM would not have been until October 2013. Although Blackmore testified that he was aware that Longshoremen claimed the disputed work, Longshoremen is not a signatory to the STP-TTI agreement, and there is no evidence that Longshoremen had any part in TTI's actions or bargaining positions during its negotiations with STP.

The STP-TTI agreement pertinently states that "TTI will provide ILWU labor to operate a conveyor system that will convey muck spoils generated during mining operations to either the predetermined surge pile location or deposited directly onto barge operations berthed at the Washington Department of Transportation five acre parcel located at the north end of Terminal 46." The agreement further states that TTI will "[p]rovide supervision and [ILWU] labor" to operate "conveyors," "front-loaders," and the "barge positioning system," and it includes a more detailed description of the disputed work. An addendum to this agreement states that STP "shall maintain complete responsibility and authority for management and supervision" of the disputed work. Concerning the addendum, Dixon testified that STP would agree to assign work to Longshoremen only if STP retained the "same level of operational control that [it] would have with [its] own employees."

The Building Trades learned about the STP-TTI agreement. On May 22, 2013, NCA, Carpenters, and Operating Engineers filed a grievance against STP, alleging that the PLA covered the disputed work and that the STP-TTI agreement violated the PLA subcontracting clause. In July 2013, an arbitrator ruled that STP violated the PLA and ordered STP to assign the disputed work to the Building Trades.

On July 30, 2013, STP began tunneling work, which initially involved only the use of trucks for muck transport. STP had not yet begun barge work because the winches for positioning barges had not arrived yet. Thus, STP only required the two conveyor operators, and it assigned this portion of the disputed work to its employees represented by Operating Engineers.

On August 20, 2013, Longshoremen began picketing the jobsite. An employee and the president of OMA Construction, a company hired by STP to haul away muck by truck, both testified that Longshoremen members stood shoulder-to-shoulder at the entry point to Terminal 46, preventing them from entering the jobsite. In a television interview filmed during this picketing, Local 19 President Cameron Williams stated that the disputed work was within the jurisdiction of Longshoremen and that STP had breached its contractual obligation to assign the work to Longshoremen.[8]

B. Work in Dispute

The notice of hearing describes the work in dispute as the "unloading and loading of the tunnel muck from the Seattle tunnel project, including the operation of the conveyor belt, operation of a front-end loader, and positioning of barges."[9] NCA and Carpenters stipulated that this description is accurate; Longshoremen declined to join this stipulation. Based on the record, we find that the work in dispute is as set forth in the notice of hearing.

C. Contentions of the Parties

Longshoremen moves to quash the notice of hearing, arguing that the Building Trades has not claimed the disputed work and that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated. Longshoremen claims that this case involves a contractual and work preservation dispute created by STP. Should the Board disagree with these positions and find that there is a valid jurisdictional dispute, Longshoremen maintains that the disputed work should be awarded to employees it represents based on the factors of collective-bargaining agreements, employer preference, area and industry practice, economy and efficiency of operations, and relative skills and training.

Carpenters contends that there are competing claims to the work in dispute and Longshoremen has used pro-

[8] At the hearing, counsel for NCA and Carpenters stated that he subpoenaed Port of Seattle representative Tay Yoshitani to testify. Counsel for Yoshitani filed a petition to revoke that subpoena. This petition was unopposed, and we grant it.

[9] We have corrected an inadvertent typographical error in the description of the work in dispute in the hearing officer's report.

scribed means to enforce its claim to the work. Accordingly, Carpenters contends that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. Carpenters contends that Longshoremen does not have a meritorious "work preservation" defense because employees Longshoremen represents have not previously performed the work in dispute. Carpenters further contends that the parties do not have an agreed-upon method to adjust the dispute voluntarily, and that the Board may proceed to determine the dispute. On the merits of that determination, Carpenters asserts that the work in dispute should be awarded to employees represented by the Building Trades based on the factors of collective-bargaining agreements, employer preference, area and industry practice, relative skills and training, and economy and efficiency of operations.

D. Applicability of the Statute

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, there must be reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that there are competing claims to disputed work between or among rival groups of employees and that a party has used proscribed means to enforce its claim to the disputed work. Additionally, the Board will not proceed under Section 10(k) if the parties have agreed on a method for voluntary adjustment of the dispute. See, e.g., *Laborers Local 1184 (High Light Electric)*, 355 NLRB 167, 168 (2010). For the reasons that follow, we find that this dispute is properly before the Board for determination under Section 10(k).

The parties have not agreed on a method for voluntary adjustment of the dispute.[10] It is undisputed that Longshoremen has claimed the work. In addition, Longshoremen picketed the jobsite, and Local 19 President Williams asserted during picketing that the work was within the Longshoremen's jurisdiction and that Longshoremen had a contractual right to it. Williams' assertion indicated that there was a jurisdictional objective to the picketing. Accordingly, we find that there is reasonable cause to believe that Longshoremen used proscribed means to enforce its claim to the work in dispute. See, e.g., *Operating Engineers Local 150 (Royal Components, Inc.)*, 348 NLRB 1369, 1370 (2006).

The Building Trades claimed the disputed work when it filed the grievance against STP, arguing that STP's assignment of the disputed work to Longshoremen violated the PLA. See, e.g., *Laborers Local 931 (Carl Bolander)*, 305 NLRB 490, 491 (1991) (grievance requesting assignment of work in dispute in compliance with collective-bargaining agreement constituted claim for work). Contrary to Longshoremen, we find that the Board's decision in *Laborers (Capitol Drilling Supplies),* 318 NLRB 809 (1995), does not preclude this finding.

Capitol Drilling "involved a union's grievance against a general contractor alone, and not against the subcontractor who actually had the authority to assign the disputed work." *Laborers Local 81 (Kenny Construction Co.)*, 338 NLRB 977, 978 (2003). The Board found that absent a direct claim against the subcontractor, there were no competing claims to the disputed work and thus a true jurisdictional dispute did not exist. Id.; see *Capitol Drilling*, 318 NLRB at 811. *Capitol Drilling* does not apply, however, where the general contractor, not the subcontractor, has "assigned the disputed work to its own employees, and thereby retains the authority to assign the disputed work." *Kenny Construction*, 338 NLRB at 978.

Here, as discussed above, STP, the general contractor, assigned part of the work in dispute to its own employees. STP employees represented by Operating Engineers have already begun performing a portion of the disputed work, i.e., the two conveyor operator positions. The Board has "long held that a group of employees performing work is evidence of their claim to that work, even absent an explicit claim." *Operating Engineers Local 542 (Caldwell Tanks, Inc.)*, 338 NLRB 507, 509 (2002) (citations and internal quotation omitted). In addition, although the STP-TTI agreement states that TTI will provide and supervise Longshoremen to perform the disputed work, an addendum to that agreement states that STP "shall maintain complete responsibility and authority for management and supervision" of the disputed work. To this end, Dixon testified that STP would agree to assign work to Longshoremen only if STP retained the "same level of operational control that [it] would have with [its] own employees." Because STP is the "company that ultimately controls and makes the job assignments," it "is deemed to be the employer for the purposes of [this] 10(k) proceeding." *Iron Workers Local 1 (Goebel Forming, Inc.)*, 340 NLRB 1158, 1161 (2003). Consequently, *Capitol Drilling* is distinguishable from this case, and we find that there is reasonable cause to believe that there are competing claims to the disputed work.

We also find no merit in Longshoremen's contention that this case involves a contractual dispute between STP and Longshoremen over the preservation of work for Longshoremen-represented employees and therefore does not fall within the scope of Section 10(k) of the Act. In "*all* of the cases where the Board quashed a notice of

[10] NCA and Carpenters stipulated that the parties have not agreed on a method for voluntary adjustment of this dispute. Longshoremen declined to join this stipulation. The record contains no evidence of such a method.

hearing based on a work preservation claim, the work in dispute was historically performed by the union claiming the breach of its agreement with the employer." *Electrical Workers Local 48 (Kinder Morgan Terminals)*, 357 NLRB No. 182, slip op. at 3 (2011) (emphasis added). In contrast, when a union claims work for employees "who have not previously performed it, the objective is not work preservation, but work acquisition," a dispute the Board will resolve through a 10(k) proceeding. Id. The record establishes that employees represented by Longshoremen have never performed the work in dispute. Dixon testified without contradiction that STP has begun a portion of the disputed work (conveyor operations) and that only employees represented by Operating Engineers have performed it. TTI General Manager Blackmore testified that at Terminal 46, TTI has been involved in "zero" contracts that involved a conveyor operations component. Blackmore even conceded that this type of project is "new to Terminal 46." Longshoremen's objective is plainly work acquisition. See *Longshoremen ILWU Local 14 (Sierra Pacific Industries)*, 314 NLRB 834, 835–836 (1994) (no work preservation dispute where disputed work involved the employer's "original assignment of new work at a new location"), enfd. 85 F.3d 646 (D.C. Cir. 1996).

Citing *Machinists District 190 Local 1414 (SSA Terminal, LLC),* 344 NLRB 1018 (2005), affd. 253 Fed. Appx. 625 (9th Cir. 2007), and *Seafarers (Recon Refractory & Construction),* 339 NLRB 825 (2003), review denied 424 F.3d 980 (9th Cir. 2005), Longshoremen contends that the notice of hearing should be quashed because STP knowingly and willingly created this dispute by voluntarily entering into conflicting contractual obligations. We reject this contention. First, STP vigorously disputes that its agreement with TTI assigning the disputed work to Longshoremen was voluntary. As noted above, STP initially assigned the work to employees represented by Building Trades, and signed the agreement with TTI under pressure from WSDOT only after TTI refused to unload the TBM at Terminal 46 unless STP signed the agreement. Second, even if we were to find the agreement voluntary, in both *SSA Terminal* and *Recon* the Board quashed the notice of hearing on work-preservation grounds. As explained above, that is not the case here.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work based on the evidence presented by the parties. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 577 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction Co.)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Board certifications and collective-bargaining agreements

There is no evidence of any Board certification concerning any of the employees involved in this dispute.

STP and the Building Trades are parties to the PLA, which describes project work as including "bored tunnel and related work" and "all construction work performed at temporary facilities . . . which are integrated with and set up for the purpose of only servicing the construction project." The PLA also fully incorporates the WSDOT Request for Proposal, which describes covered work as including "[t]unnel muck storage and [a] muck loading/transfer area" and the "[e]rection of conveyors and hoppers for transfer of material onto barges." Accordingly, we find that the PLA covers the disputed work.

Although STP's agreement with TTI also covers the conveyor and winch work, we do not rely on it for the purpose of awarding the disputed work in this proceeding. In that agreement, only TTI committed to assign the disputed work to Longshoremen. This commitment, however, is not germane because the Board looks to the contractual obligations of STP, the employer that controls and assigns the disputed work here. See *Goebel Forming*, 340 NLRB at 1161. STP is not party to any collective-bargaining agreement that requires it to assign the disputed work to Longshoremen. Even if the STP-TTI agreement could be read as including a contractual commitment by STP to assign the work to Longshoremen, it would still carry little weight because Longshoremen is not a party to the agreement. See id. (If "one union has a contract which arguably supports that union's claim, and the other union has no contract at all with the assigning employer, the Board will consider those facts in its decision.") (citations omitted). In these circumstances, the factor of collective-bargaining agreements favors awarding the work in dispute to employees represented by the Building Trades.[11]

[11] We recognize that the facts concerning the factor of collective-bargaining agreements are unusual here. Even if we were to find, based on the STP-TTI agreement, that the factor of collective-bargaining agreements favors neither union, we would still award the work to employees represented by the Building Trades based on the factors of employer preference and current assignment and economy and efficiency of operations, for the reasons stated below.

2. Employer preference and current assignment

Dixon testified that STP's "original plan" was "never to use the Longshoremen" on the project. Rather, he testified that STP "always felt . . . that [it would] assign the work to the building trades under the Project Labor Agreement." Although STP proposed a composite crew of Building Trades and Longshoremen members to perform the work during various negotiations, we place little weight on that proposal. As discussed above, circumstances outside the control of STP led to this proposal.[12] As Dixon explained, STP prefers utilizing employees represented by the Building Trades because they, unlike Longshoremen-represented employees, ensure economy and efficiency of operations at the project site. Cf. *Miscellaneous Drivers Local 610*, 196 NLRB 1140, 1142 (1972) (discounting factor of employer preference because employer did not support preference with relevant considerations). In addition, STP currently assigns the conveyor work to employees represented by the Building Trades. We find that the factor of employer preference and current assignment favors awarding the work in dispute to employees represented by the Building Trades.

3. Area and industry practice

Marge Newgent, field representative for Operating Engineers Local 302, testified that between 2004 and 2010, Operating Engineers locals have performed construction work at several transportation-related projects in the Seattle area. Newgent testified that each of these projects involved the construction of a tunnel and removal of muck, and that Operating Engineers manned conveyors and front-end loaders to remove waste at all of these construction sites. Newgent testified that Operating Engineers loaded barges at only one of these projects. Dan Hutchins, Director of the Contract Administration Department for Carpenters, generally testified that piledrivers (a type of carpenter) have loaded and unloaded dredging, jetting spoils (soil), construction waste, and debris onto and off of barges during construction projects in the Seattle area. Hutchins also testified that piledrivers and Operating Engineers currently use cranes and forklifts to transfer waste onto barges at a Bangor, Washington Naval Facility project.

Relevant to this factor, Local 19 President Williams testified as follows. Throughout the West Coast for decades, Local 19 and other Longshoremen locals have loaded and unloaded a variety of cargo and materials onto and off of barges. In Sacramento and Stockton, California, Longshoremen load barges with grain, iron ore, rice, and potash at terminals that include conveyor operations. In the Port of Seattle and surrounding ports, Longshoremen have handled grain, iron ore, general cargo, scrap metal, cars, potash, logs, pulp, paper products, and steel. At Terminal 86 in the Port of Seattle, Longshoremen operate a conveyor system that transports grain to silos and vessels. At a dredge operation at another port near Seattle, a Longshoremen local is performing payloader operations and positioning a barge.

Because the evidence shows that employees represented by both the Building Trades and Longshoremen perform work of the type in dispute here, we find that the factor of area and industry practice does not favor an award of the disputed work to either group of employees.

4. Relative skills and training

The parties presented limited evidence concerning relative skills and training. Williams testified that Local 19 members are OSHA-certified to operate the equipment used at the project. Williams further testified that Local 19 members complete Power Industrial Truck training, which qualifies them to operate a front-end loader. Williams explained that all Longshoremen members are subject to the Pacific Coast Marine Safety Code, which governs the use of barges, vessels, and "any operations" performed at marine terminals, including tunnel muck work. Williams' testimony suggests that this safety code necessitates training. Newgent testified that Operating Engineers members carry the same OSHA certification as Longshoremen and complete a HAZMAT course, which qualifies them to handle hazardous materials. Hutchins testified that Carpenters facilitates a 4-year apprenticeship program where, among other things, members receiving training in the proper tying of barges. He also testified that piledrivers can operate winches to position barges.

Because the evidence suggests that employees represented by both Longshoremen and the Building Trades share comparable skills and training relative to the work in dispute, we conclude that this factor does not favor an award of the work in dispute to either employee group.

[12] See *Laborers Local 4 (Cleveland Marble)*, 285 NLRB 230, 232 (1987) (finding that employer's preference for a composite crew of laborers and stone setters, rather than a crew of laborers alone, was not "freely made" and thus not entitled to much weight where the employer changed its preference "only after there were rumors at the jobsite that stone setters might cause a work stoppage" if they "did not perform at least some of the work"); *Longshoremen ILWU Local 50 (Brady-Hamilton Stevedore Co.)*, 223 NLRB 1034, 1037 (1976), reconsideration granted and decision rescinded on other grounds 244 NLRB 275 (1979) (Board "constrained to treat the Employers' asserted post-work-stoppage preference for longshoremen with a good deal of skepticism because such statements of preference may not be representative of a free and unencumbered choice," given that employers only changed their original preference for operating engineers after a work stoppage "forced" them to reassign the work to longshoremen).

5. Economy and efficiency of operations

Dixon, Newgent, and Hutchins testified that if employees represented by the Building Trades were not performing the work in dispute, they could perform other construction work on the project. Hutchins testified that piledrivers could perform concrete, scaffold, and shoring work. Newgent testified that members of the Operating Engineers who run conveyor belts "are usually like [] mechanics or [] welders." She further explained that an operating engineer hired to run a loader and excavator at another project is currently manning a crane and forklift while that project's conveyer system is not running. Blackmore generally testified that employees Longshoremen would assign to perform the work under the STP-TTI agreement would qualify as a utility work force that could perform "other functions" at the project site. Local 19 President Williams testified, however, that Longshoremen does not represent construction workers.

Based on the foregoing testimony, we find that assigning Building Trades–represented employees to perform the work in dispute is more economical and efficient than assigning the work to Longshoremen-represented employees because the former are better capable of performing additional construction work if needed. See, e.g., *Operating Engineers Local 825 (Walters & Lambert)*, 309 NLRB 142, 145 (1992) (factor of economy and efficiency of operations favored laborers over operating engineers because when not performing disputed work, laborers were more familiar with additional craft work and had more experience necessary to perform such work). Accordingly, we find that this factor favors an award of the disputed work to employees represented by the Building Trades.

Conclusion

After considering all of the relevant factors, we conclude that employees represented by Carpenters and Operating Engineers are entitled to perform the disputed work. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference, current assignment, and economy and efficiency of operations. In making this determination, we award the work to employees represented by Carpenters and Operating Engineers, not to those labor organizations or to their members.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Seattle Tunnel Partners represented by Pacific Northwest Regional Council of Carpenters and International Union of Operating Engineers, Local 302 are entitled to unload and load tunnel muck, including the operation of the conveyor belt, operation of a front-end loader, and winch work related to the positioning of barges, from the Seattle tunnel project in Seattle, Washington.

International Longshore and Warehouse Union, Local 19 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Seattle Tunnel Partners to assign the disputed work to employees it represents.

Within 14 days from this date, International Longshore and Warehouse Union, Local 19 shall notify the Regional Director for Region 19 in writing whether it will refrain from forcing Seattle Tunnel Partners, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. December 2, 2014

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Philip A. Miscimarra, Member

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Harry I. Johnson, III, Member

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Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD